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SENATE

REPORT
101-483

MAKING CERTAIN TECHNICAL AND CLARIFYING AMENDMENTS TO THE INDIAN SELF-DETERMINATION ACT, AND FOR OTHER PURPOSES

OCTOBER 1, (legislative day, SEPTEMBER 10), 1990.—Ordered to be printed

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Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2928]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2928), to make certain technical and clarifying amendments to the Indian Self-Determination Act, and for other purposes, having considered the same, reports favorably thereon with amendment(s) and recommends that the bill as amended do pass. The amendments are as follows:

AMENDMENTS

On page 2, line 9, before the period insert the following: "and before the period insert the words 'through the respective Secretary'."

On page 3, line 7, delete the word "fiscal" and before the comma insert "beginning in 1992".

On page 3, delete lines 14 through 19.

On page 3, delete line 20, delete "(g)" and insert in lieu thereof "(f)".

On page 3, line 22, before the comma, insert "and tribal organizations".

On page 3, beginning on line 23, delete all through line 6 on page 4.

On page 4, line 17, delete the word "otherwise" and insert in lieu thereof "outside of a reservation and".

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On page 4, line 19, after the word "government" insert the following: ", or if outside of a reservation, to the recognized tribal government possessing jurisdiction over the land".

On page 5, delete lines 1 through 11.

On page 5, line 12, delete "(d)" and insert "(c)".

On page 5, line 19, insert the following new subsection:

"(d) AMENDMENT TO THE EDUCATION AMENDMENTS OF 1978.—Subsection (c) of section 1128 of the Education Amendments of 1978 (25 U.S.C. 2008) is amended by adding at the end the following new paragraph:

> "(6)(A) The Secretary shall adjust the formula established under subsection (a) to use a weighted unit of .25 for each eligible Indian student enrolled in a secondary education program offering a coherent course of subjects providing training leading to a competency in a technological skill."

PURPOSE

S. 2928 makes amendments to Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975. In addition, the bill amends other Indian statutes, including the Indian Land Consolidation Act, the so-called Quinault Boundary Act (Act of November 8, 1988), the Act of March 29, 1956 dealing with mortgages of trust lands, and the Public Health Service Act.

BACKGROUND

The Indian Self Determination Act represents a major turning point in the history of the relations between the United States and the Indian tribes. The Act requires the Bureau of Indian Affairs and the Indian Health Service, the two agencies of government whose only constituencies are Indian tribes, to contract with those tribes for the programs and services that would otherwise be performed by the agencies on behalf of the tribes. Major amendments to the law were enacted in October, 1988, as Public Law 100-472. In the nearly two years since enactment of these amendments, certain problems have surfaced that need correction or clarification of Congressional intent. S. 2928 will make those corrections and clarifications so that tribal self-determination can go forward.

LEGISLATIVE HISTORY

S. 2928 was introduced by Chairman Inouye on July 27, 1990, and was referred to the Select Committee on Indian Affairs.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on July 25, 1990, by unanimous vote, recommends that the Senate pass S. 2928, with amendments.

> "(B) The adjustment required under subparagraph (A) shall be used for the first fiscal year and each succeeding fiscal year for which there is an increase in the funds appropriated for allotment under this section specifically for the implementation of this paragraph."

Explanation of Committee Amendments

Amendment 1 makes clear that the responsibility for returning unexpended funds to the U.S. Treasury rests with the Secretary of the agency through which the funds were appropriated.

Amendment 2 was suggested by the Administration to give a year's lead time before the first report is required on additional obligations that are imposed on the Secretary under the section being amended.

Amendment 3 deletes a subsection that the Administration found objectionable that deals with accounting for deficiencies in indirect cost funds for any Federal agency.

Amendment 4 redesignates a subsection.

Amendment 5 includes tribal organizations in a provision requiring tribal participation in the revision or amendment of Self-Determination Act regulations.

Amendment 6 deletes another subsection that the Administration found objectionable that would have required the Secretaries of the Interior and Health and Human Services to make up for shortfalls in indirect cost funding from other Federal and state agencies.

Amendments 7 and 8 provide further clarification that lands which escheat to a tribe should only include those lands that are within the jurisdiction of such tribe, whether on or off the reservation.

Amendment 9 deletes an amendment to the Agua Caliente allotment equalization act in order to give the Committee and the Administration additional time to work out an agreed upon solution to the problem of individual and tribal control over investments of trust monies by the BIA.

Amendment 10 redesignates a subsection.

Amendment 11 amends the 1978 Education Amendments to provide a weighted student unit factor for students enrolled in vocational education programs, provided that funds are made available for this purpose.

Section by Section Analysis of Bill as Amended

Section 1(1) clarifies that a tribal organization's right to request that its contract be considered mature applies to all past and future contracts, and is not limited to contracts in effect on the date of enactment of the 1988 amendments. The clause deleted by this subsection has led to confusion regarding the process for designating as "mature" those contracts that are awarded for the first time after the 1988 amendments.

Section 1(2) clarifies that the benefits accorded tribes elsewhere in the Act relating to contracts (such as funding amounts, prohibited funding reductions, savings, carryover, etc.) apply equally to grants and cooperative agreements which, under section 9, may be utilized in lieu of a contract when mutually agreed to by the tribal organization and the Secretary.

Section 1(3) makes a correction to the 1975 Act that was overlooked during the 1988 amendments. Under those amendments, Section 106(a)(3) authorizes tribes to retain savings of unexpended funds to be used for specific purposes and section 8 authorizes

tribes to carry over unexpended funds into the next fiscal year. However, in making these changes, Congress did not show these new provisions as exceptions to section 5(d) of the Act, which is a general requirement that unexpended funds be returned to the Treasury. This amendment will make those exceptions part of section 5(d).

Section 2(a) clarifies the territory over which the law applies. Section 103(a)(3) authorizes the Secretary to make grants for the acquisition of land. Recent decisions of the United States Supreme Court and several courts of appeals have clarified that the general principles of Indian law apply not strictly to areas declared to be "reservations," but to the broader category of areas designated as "Indian Country," including "dependent Indian communities." Such communities include some pueblos, at least one off-reservation Navajo community, and two tribes in Oklahoma and South Dakota. See *California* v. *Cabazon and of Mission Indian,* 480 U.S. 202, n. 5 (1987); *United States* v. *Sandoval,* 231 U.S. 28 (1913); *United States* v. *McGowan,* 302 U.S. 535 (1937); *Alaska* v. *Venetie,* 856 F.2d 1384 (9th Cir. 1988); *United States* v. *Azure,* 801 F.2d 336 (8th Cir. 1986); *United States* v. *levesque,* 681 F.2d 75 (1st Cir. 1982); *United States* v. *South Dakota,* 665 F.2d 837 (8th Cir. 1981); *Weddel* v. *Meierhenry,* 636 F.2d 211 (8th Cir. 1980); *United States* v. *Martime,* 442 F.2d 1022 (10th Cir. 1971). (See also, 25 U.S.C. 1903(10) "Indian country" used to define trial jurisdiction in Indian Child Welfare Act proceedings.) The amendment clarifies that the Secretary's authority under the Act to provide grants for land acquisition includes all Indian country, whether technically characterized as a formal reservation or as a "dependent Indian community."

Section 2(b) amends Section 102(d) of the Act which reflects a comprehensive effort by Congress to make the Federal Tort Claims Act applicable to all medically-related liabilities arising out of the administration by tribal contractors of Federal medical programs. Despite the congressional intent to comprehensively over this entire area in subsection (d), the Public Health Service has taken the position that only health services delivered in connection with the operation of ambulances or other emergency medical motor vehicles are within the scope of the Federal Tort Claims Act. The amendment addresses this issue by expressly making the Federal Tort Claims Act also applicable to the actual operation of vehicles.

Section 2(c) corrects an oversight in the 1988 amendments which suggests that despite a tribal organization's desire otherwise, a contract declared to be "mature" must always be for an indefinite term, and may never have a termination date. This oversight yields the peculiar result of not permitting a mature contract to ever end unless the special retrocession procedures set forth in section 109 of the Act are triggered.

Congress intended to expand the range of options available to tribes through the more liberalized "mature" designation, not to restrict those options, and the section as presently drafted is defective. The amendment makes clear that a mature contract can be for either a fixed term or for an indefinite term, with the choice to be made by the affected tribe or tribal organization. The amendment also makes clear that a tribal organization, as in all instances, is limited by any applicable restrictions contained in a

tribal resolution when requesting mature contract status. For instance, if a tribe has only granted a tribal organization authority to contract for five years, the tribal organization cannot request as a term of a mature contract a provision which would result in a contract lasting longer than five years.

Section 2(d) corrects current law which "defaults" to the calendar year as the funding period for self-determination contracts, beginning with fiscal year 1990. That is, unless a tribe or tribal organization affirmatively selects a different funding period *and* the Secretary agrees to it, all contracts and agreements are automatically converted to the calendar year.

Although the current law reflects the desires of many tribes and will typically improve financial management, many tribal contractors do not want to convert to the calendar year in 1990. This includes many school contractors which hope that Congress will enable schools to convert to a July-June period by making the necessary one-time additional funds available in fiscal year 1991. Under the current law, these contractors are required to obtain concurrence from the appropriate Secretary to maintain the status quo. Similarly, any contractor wishing to move to any funding period other than the calendar year (or the government's fiscal year) must first obtain the Secretary's concurrence.

Moving from the government's fiscal year to the calendar year (or to any other contract period) necessarily has one-time funding implications for the transition year (the year in which conversion to the new contract period is effected). In the case of conversion from the fiscal to the calendar year, funds for one additional quarter must be appropriated (as was done for fiscal year 1990). If any other contract period is agreed upon, one-time additional appropriations would be needed for two or three extra quarters in the transition year. Yet, existing law requires the BIA and IHS to only report the amount of the additional funding needed for contract conversion in fiscal year 1989. In fiscal year 1990, a one-time appropriation was made available to convert all contracts to a calendar year basis. Some contractors wish to retain a fiscal year basis of funding, or in the case of school contractors, to convert to a July-June period, and some contractors are unaware that their contracts will be automatically converted to a calendar year basis. Accordingly, section 2(d) provides the flexibility for a tribal contractor and the Secretary to agree upon a different basis of funding, subject to the availability of appropriations to effect a conversion from a calendar year basis of funding.

Existing law does not provide a mechanism for exercising calendar year contracting rights after 1990, where a contractor decides to stay with fiscal year contracting for the time being. Nor does it require the Secretary to report on the additional funding needed for contract conversions effected after fiscal year 1989. The proposed amendment corrects these technical deficiencies.

Section 2(e) clarifies that Congress, in enacting the 1988 amendments, understood that the Secretary of the Interior and the Secretary of Health and Human Services had statutory authority to convey real property to an Indian tribe or tribal organization. Although the Secretary of the Interior agrees that such authority exists (25 U.S.C. 443a), officials within the Department of Health

and Human Services have raised the question of whether their authority goes so far. If it does not, DHHS would have to make an interagency transfer to Interior, so Interior could then convey the property to a tribe. The amendment clarifies that both Secretaries have the authority to convey real property to an Indian tribe or tribal organization under the circumstances addressed in subsections (f)(2) and (f)(3).

Section 2(f) conforms with the 1988 amendments in which Congress made clear in subsection (b) that the Secretary was to formulate appropriate regulations to implement the Act, as amended, "with the participation of Indian tribes." Subsection (c) of section 107, which deals with future amendments to such regulations, was not similarly amended. Obviously, it is equally important that Indian tribes participate in the development of future amendments. The proposed amendment clarifies the intent of the Congress on this issue.

Section 3(a) amends the Indian Land Consolidation Act to make clear that lands within a reservation or other trust lands outside of reservations subject to the escheat provision, escheat to the recognized tribal government of the particular reservation, or to the tribal government that has jurisdiction over the off-reservation lands, and not to a different tribal government. For example, if a member of the Quinault Indian Nation who owns land within the Lummi Indian Reservation that is subject to the escheat provision of the Indian Land Consolidation Act, dies intestate, his land would escheat to the Lummi Indian Tribe and not the Quinault Indian Nation.

Section 3(b) clarifies the Quinault Indian Nation Act of 1988 so that both the map and its attachments make up the Quinault Indian Reservation boundary description. The referenced map and attached metes and bounds description appears in printed record of the hearing on S. 2772, which was enacted as P.L. 100-638; see, S. Hrg. 100-927, at 134-135.

Section 3(c) amends 25 U.S.C. 483, enacted in 1956 to authorize Indian owners of land held in trust or restricted status by the United States to mortgage the land with the approval of the Secretary of the Interior. In 1984 Congress amended 25 U.S.C. 483 to allow foreclosed land purchased by an Indian or an Indian tribe to remain in trust status. Under the 1956 version of section 483, Indian land foreclosed upon was required to lose its trust status. Adherence to state foreclosure law was mandated. Unfortunately, the 1984 perfecting amendment to 25 U.S.C. 483 only partially cured the problem: it protected the trust status of foreclosed lands when the purchaser was Indian, but it did not authorize application of tribal foreclosure law on Indian trust land.

Increasingly, Indian tribes seek to advance economic independence and self-government through tribal credit loan programs benefitting Indians and Indian businesses. In order for loan programs to operate efficiently, foreclosure must be an option. Many tribes, therefore, are in the process of adopting tribal foreclosure ordinances. This amendment will ensure that tribes are able to enforce foreclosure laws not only on Indian fee lands but on Indian trust lands.

Section 3(d) amends the Education Act of 1978, the statute that establishes the Indian Student Equalization Formula [ISEF] program for BIA funded schools. There is a real need for increased modern vocational/technical training programs in BIA funded secondary schools. This amendment would authorize, subject to the availability of new funds for this purpose, a new factor for inclusion in the BIA weighted student unit [WSU] formula for students enrolled in vocational programs. An identical amendment was proposed in the House version of the amendments to the Carl Perkins Vocational Education Act but was inadvertently omitted by the conference on the measure.

Section 4 amends the Public Health Service Act to provide that funds for scholarships for Native Hawaiians may be provided to Kamehameha Schools/Bishop Estate by means other than a contract.

Cost and Budgetary Considerations

The cost estimate of S. 2928, as amended, as evaluated by the Congressional Budget Office, is set forth below:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 19, 1990.

Hon. Daniel K. Inouye,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 2928, a bill to make certain technical and clarifying amendments to the Indian Self-Determination Act, and for other purposes, as ordered reported by the Senate Select Committee on Indian Affairs on September 12, 1990.

S. 2928 would amend the Indian Self-Determination and Education Assistance Act of 1975, as well as a number of other Indian statutes. These amendments would be technical in nature and CBO estimates that enactment of this bill would result in no cost to the federal government or to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226–2860.

Sincerely,

James J. Blum
(For Robert D. Reischauer).

Regulatory Impact Statement

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2928, as amended, will have minimal regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

At the time of filing this report, the Committee had not received a report from any agency of the Federal government providing its views on S. 2928.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 25, UNITED STATES CODE

CHAPTER 14—MISCELLANEOUS

Subchapter II—Indian Self-Determination

* * * * * * *

§ 450b. Definitions

For purposes of this Act, the term—

* * * * * * *

(h) "mature contract" means a self-determination contract that has been continuously operated by a tribal organization for three or more years, and for which there are no significant and material audit exceptions in the annual financial audit of the tribal organization: *Provided,* That upon the request of a tribal organization or the tribal organization's Indian tribe for purposes of section 102(a) of this Act, a contract of the tribal organization [in existence on October 5, 1988] which meets this definition shall be considered to be a mature contract;

* * * * * * *

(j) "self-determination contract" means a [contract entered] *contract (or grant or cooperative agreement utilized under section 9 of this Act) entered* into pursuant to this Act between a tribal organization and the appropriate the [1] Secretary for the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law: *Provided,* That except as provided [2] the last proviso in section 105(a) of this Act, no [contract entered] *contract (or grant or cooperative agreement utilized under section 9 of this Act) entered* into pursuant to this Act shall be construed to be a procurement contract;

* * * * * * *

§ 450c. Reporting and audit requirements for recipients of Federal financial assistance

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(d) REPAYMENT TO TREASURY BY RECIPIENT OF UNEXPENDED OR UNUSED FUNDS.—[Any] *Except as provided in section 8 or 106(a)(3)*

of this Act, funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States *through the respective Secretary.*

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§ 450f. Self-determination contracts

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(d) PROCUREMENT OF LIABILITY INSURANCE BY TRIBE AS PREREQUISITE TO EXERCISE OF CONTRACTING AUTHORITY BY SECRETARY; REQUIRED POLICY PROVISIONS.—For purposes of section 233 of Title 42, with respect to claims by any person, initially filed on or after December 22, 1987, whether or not such person is an Indian or Alaska Native or is served on a fee basis or under other circumstances as permitted by Federal law or regulations for personal injury, including death, resulting from the performance prior to, including, or after December 22, 1987, of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations *and the operation of emergency motor vehicles,* an Indian tribe, a tribal organization or Indian contractor carrying out a contract, grant agreement, or cooperative agreement under this section or section 450h of this title is deemed to be part of the Public Health Service in the Department of Health and Human Services while carrying out any such contract or agreement and its employees (including those acting on behalf of the organization or contractor as provided in section 2671 of Title 28) are deemed employees of the Service while acting within the scope of their employment in carrying out the contract or agreement: *Provided,* That such employees shall be deemed to be acting within the scope of their employment in carrying out such contract or agreement when they are required, by reason of such employment, to perform medical, surgical, dental or related functions at a facility other than the facility operated pursuant to such contract or agreement, but only if such employees are not compensated for the performance of such functions by a person or entity other than such Indian tribe, tribal organization or Indian contractor.

* * * * * * *

§ 450h. Grants to tribal organizations or tribes

(a) REQUEST BY TRIBE FOR CONTRACT OR GRANT BY SECRETARY OF THE INTERIOR FOR IMPROVING, ETC., TRIBAL GOVERNMENTAL, CONTRACTING, AND PROGRAM PLANNING ACTIVITIES.—

* * * * * * *

(3) the acquisition of land in connection with items (1) and (2) above: *Provided,* That in the case of land within [reservation boundaries] *Indian country (as defined in chapter 53 of title 18, United States Code)* or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of Interior may (upon request of the tribe) acquire such land in trust for the tribe.

* * * * * * *

§ 450j. Contract or grant provisions and administration

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(c) TERM OF SELF-DETERMINATION CONTRACTS; ANNUAL RENEGOTIATION.—

(1) A self-determination contract shall be—

(A) for a term not to exceed three years in the case of other than a mature contract, unless the appropriate Secretary and the tribe agree that a longer term would be advisable, and

[(B) for an indefinite term in the case of a mature contract.]

(B) for a definite or an indefinite term, as requested by the tribe (or, to the extent not limited by tribal resolution, by the tribal organization), in the case of a mature contract.

The amounts of such contracts shall be subject to the availability of appropriations.

(d) CALENDAR YEAR BASIS FOR CONTRACTS.—

[(1) No later than fiscal year 1990, the Secretary shall begin using the calendar year as the basis for contracts and agreements under this Act except for instances where the Secretary and the Indian tribe or tribal organizations agree on a different period.

[(2) The Secretary shall submit a report to the Congress within ninety days of October 5, 1988, on the amounts of any additional obligational authority needed to implement this subsection in fiscal year 1989.]

(1) Beginning in fiscal year 1990, upon the election of a tribal organization, the Secretary shall use the calendar year as the basis for any contracts or agreements under this Act, unless the Secretary and the Indian tribe or tribal organization agree on a different period.

(2) The Secretary shall, on or before April 1 of each year beginning in 1992 submit a report to the Congress on the amounts of any additional obligation authority needed to implement this subsection in the next following fiscal year.

* * * * * * *

(f) USE OF EXISTING SCHOOL BUILDINGS, AND OTHER FACILITIES AND EQUIPMENT THEREIN; ACQUISITION AND DONATION OF EXCESS OR SURPLUS GOVERNMENT PERSONAL PROPERTY.—In connection with any self-determination contract or grant made pursuant to section 450f or 450h of this title, the appropriate Secretary may—

(1) permit an Indian tribe or tribal organization in carrying out such contract or grant, to utilize existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal *or real* property owned by the Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance;

(2) donate to an Indian tribe or tribal organization the title to any personal *or real* property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, including property and

equipment purchased with funds under any self-determination contract or grant agreement; and

(3) acquire excess or surplus Government personal *or real* property for donation to an Indian tribe or tribal organization if the Secretary determines the property is appropriate for use by the tribe or tribal organization for a purpose for which a self-determination contract or grant agreement is authorized under this Act.

§ 450k. Rules and regulations

(c) REVISIONS AND AMENDMENTS; PROCEDURES APPLICABLE.—The Secretary of the Interior and the Secretary of Health and Human Services are authorized *with the participation of Indian tribes and tribal organizations* to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the respective Secretary or Secretaries shall present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives and shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

Subchapter V—Protection of Indians and Conservation of Resources

§ 483a. Mortgages and deeds of trust by individual Indian owners

(a) FORECLOSURE OR SALE OF LAND.—The individual Indian owners of any land which either is held by the United States in trust for them or is subject to a restriction against alienation imposed by the United States are authorized, subject to approval by the Secretary of the Interior, to execute a mortgage or deed of trust to such land. Such land shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the *tribe in which the land is located or, in the case where no tribal foreclosure law exists, in accordance with the laws of the* State or Territory in which the land is located. For the purpose of any foreclosure or sale proceeding the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceeding, and any conveyance of the land pursuant to the proceeding shall divest the United States of title to the land. All mortgages and deeds of trust to such land heretofore approved by the Secretary of the Interior are ratified and confirmed.

CHAPTER 22—EDUCATION PROGRAMS OF BUREAU OF INDIAN AFFAIRS

§ 2008. Allotment formula

* * * * * * *

(c) ADJUSTMENTS TO FORMULA FOR FISCAL YEAR 1990 AND SUBSEQUENT FISCAL YEARS; EQUAL ALLOWANCE FOR SCHOOL BOARD TRAINING AND ACTIVITIES; AMOUNTS FOR SCHOOL BOARD TRAINING AND ACTIVITIES; ADJUSTMENT FOR GIFTED AND TALENTED STUDENTS; FUNDS FOR SCHOOLS OPERATED BY TRIBES TREATED AS STATE POLITICAL SUBDIVISIONS.—

* * * * * * *

(5) For each of the fiscal years 1989 and 1990, the Secretary shall adjusts the formula established under subsection (a) of this section to provide funding to contract schools that are treated under State law as political subdivisions of the State in an amount sufficient to enable the schools to meet standards imposed by the State.

(6)(A) The Secretary shall adjust the formula established under subsection (a) to use a weighted unit of .25 for each eligible Indian student enrolled in a secondary education program offering a coherent course of subjects providing training leading to a competency in a technological skill.

(B) The adjustment required under subparagraph (A) shall be used for the first fiscal year and each succeeding fiscal year for which there is an increase in the funds appropriated for allotment under this section specifically for the implementation of this paragraph.

CHAPTER 24—INDIAN LAND CONSOLIDATION

§ 2206. Escheat to tribe of trust or restricted or controlled lands; fractional interest; Indian trial code

(a) DESCENT OR DISTRIBUTION.—

[No undivided interest in any tract of trust or restricted land within a tribe's reservation or otherwise subject to a tribe's jurisdiction shall descend by intestacy or devise but shall escheat to the tribe]

No undivided interest held by a member or nonmember Indian in any tract of trust land or restricted land within a tribe's reservation or outside of a reservation and subject to such tribe's jurisdiction shall descend by intestacy or devise but shall escheat to the reservation's recognized trial government, or if outside of a reservation, to the recognized tribal government possessing jurisdiction over the land if such interest represents 2 per centum or less of the total acreage in such tract and is incapable of earning $100 in any one of the five years from the date of decedent's death. Where the fractional interest has earned to its owner less than $100 in any one of the five years before the decedent's death, there shall be a rebuttable presumption that such interest is incapable of earning $100 in any one of the five years following the death of the decedent.

PUBLIC LAW 100-638 [S. 2752]; November 8, 1988

QUINAULT INDIAN RESERVATION

AN ACT to declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXPANSION OF QUINAULT INDIAN RESERVATION.

The Quinault Indian Reservation is hereby expanded to include those lands consisting of more or less eleven thousand nine hundred and five acres and generally depicted on the map *and attached narrative metes and bounds description* entitled, "North boundary expansion, Quinault Indian Nation", numbered 88-S2752-1 and dated September 23, 1988, which shall be on the file and available for public inspection in the offices of the Chief, Forest Service, and of the Assistant Secretary for Indian Affairs, Department of the Interior, and of the tribal offices of the Quinault Indian Nation. The boundary of the Olympic National Forest is hereby modified as depicted on the map *and attached narrative metes and bounds description* referred to in this section.

SEC. 2. QUINAULT SPECIAL MANAGEMENT AREA.

The Secretary of Agriculture shall—

(a) manage those Federal lands within the boundaries of the Olympic National Forest consisting of more or less five thousand four hundred and sixty acres and generally depicted on the map *and attached narrative metes and bounds description* entitled "Quinault Special Management Area" numbered 88-S2752-1 and dated September 23, 1988, which shall be on file and available for public inspection in the offices of the Chief, Forest Service, and of the Assistant Secretary for Indian Affairs, Department of the Interior, and of the tribal offices of the Quinault Indian Nation in a manner consistent with section 3; and

(b) shall distribute the proceeds from the sale of forest products on lands referred to in subsection (a) as provided in section 4.

TITLE 42

The Public Health and Welfare

CHAPTER 6A—PUBLIC HEALTH SERVICE

Subchapter II—General Powers and Duties

PART D—PRIMARY HEALTH CARE

Subpart III—Scholarship Program and Loan Repayment Program

§ 254s. Native Hawaiian Health Scholarships

(a) ELIGIBILITY.—Subject to the availability of funds appropriated under the authority of subsection (d) of this section, the Secretary shall provide scholarship assistance, pursuant to a contract with the Kamehameha Schools/Bishop Estate, to students who—

(1) meet the requirements of section 254*l*(b) of this title, and

(2) are Native Hawaiians.

Subject to the availability of funds appropriated under the authority of subsection (d), the Secretary shall provide funds to Kamehameha Schools/Bishop Estate for the purpose of providing scholarship assistance to students who—

(1) meet the requirements of section 338A(b), and

(2) are Native Hawaiians.

○